

Assembly Bill No. 1337

CHAPTER 124

An act to amend Section 87610.1 of the Education Code, relating to community college employees.

[Approved by Governor July 8, 2000. Filed with
Secretary of State July 10, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, Havice. Public postsecondary education: community college faculty.

Under existing law, if a case concerning the granting of tenure of community college faculty proceeds to arbitration with representation by the exclusive representative, the resulting decision is not to be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead affects only the result in that particular case.

This bill would specify that the resulting decision is not to be considered a precedent as described above, and that it would affect only the result in that particular case, if the case proceeds to arbitration without, instead of with, representation by the exclusive representative.

The people of the State of California do enact as follows:

SECTION 1. Section 87610.1 of the Education Code is amended to read:

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

“Arbitration,” as used in this section, refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration without representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee’s share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform “supervisory” or “management” duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

